

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

REC'D 25 JAN 2005

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Applicant's or agent's file reference DRH/BP6184071	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/GB 03/05166	International filing date (day/month/year) 27.11.2003	Priority date (day/month/year) 27.11.2002
International Patent Classification (IPC) or both national classification and IPC A61B18/14		
Applicant HANCOCK, Christopher Paul et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of 17 sheets.

3. This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☒ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the International application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 21.06.2004	Date of completion of this report 20.01.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Kurze, V Telephone No. +49 89 2399-7380 

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/GB 03/05166

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

2-44 as originally filed
1 received on 01.03.2004 with letter of 01.03.2004

Claims, Numbers

1-29, 30 (part) as originally filed
30 (part), 31-39 filed with telefax on 13.09.2004

Drawings, Sheets

1/14-14/14 received on 01.03.2004 with letter of 01.03.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 27-33,35

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 1-18 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the said claims Nos. 27-33,35

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees, the applicant has:

☐ restricted the claims.

☒ paid additional fees.

☐ paid additional fees under protest.

☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

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☐ complied with.

☐ not complied with for the following reasons:

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

☐ all parts.

☒ the parts relating to claims Nos. 1-18,34-39 .

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	34-39
	No: Claims	1-18
Inventive step (IS)	Yes: Claims	34-39
	No: Claims	1-18
Industrial applicability (IA)	Yes: Claims	1-18,34-39
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The first invention (claims 1-18) contains 2 independent apparatus claims (1 and 2). Although these claims have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought in respect of the terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

Hence, the claims on file do not meet the requirements of Article 6 PCT.

Re Item IV

Lack of unity of invention

The arguments set forth in the Invitation to pay additional search fees, dated 1.4.2004, are still valid. Since only the claims concerning the first and fourth invention have been searched and the applicant has requested examination of the first and fourth invention, only these claims are examined.

It is noted that claim 35 as originally filed belonged to an unsearched invention. The amendments have rendered it now part of the fourth invention.

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. The invention as claimed in independent claims 1 or 2 concerns well-known tuning means for matching the wave impedance of the probe such that the microwave radiation is not reflected back into the probe but is radiated away from the probe. Such tuning means and detectors for detecting magnitude and phase of reflected radiation are common practise. Therefore, claims 1 and 2 lack novelty (Article 33(2) PCT).

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EXAMINATION REPORT - SEPARATE SHEET**

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2. Claim 34 defines an apparatus which has not been disclosed or rendered obvious by the available prior art. The arguments set forth in the letter dated 24.08.2004 are endorsed by the examiner.

Therefore, the subject-matter of claim 34 and by virtue of their dependence, claims 35-39 are considered novel and inventive (Article 33(2) and (3) PCT) over the available prior art.